

Jessica Yeager, Senior Scientist
Potesta & Associates, Inc.
7012 MacCorkle Ave.
Charleston, West Virginia 25304

Michael Callaghan, Esquire
Neely & Callaghan
159 Summers Street
Charleston, West Virginia 25301

Re: Dam Characterization and Removal Plan of Dams 11 through 20

Dear Ms. Yeager:

Pursuant to Paragraph 24 of the Consent Decree entered in *United States, et al. v. James C. Justice Companies, et al.*, Civ. Action No. 1:15-cv-16018, the U.S. Environmental Protection Agency Region III (EPA), in consultation with the West Virginia Department of Environmental Protection, has reviewed the above-referenced plan submitted dated April 2016. Based on our review, EPA cannot approve the plan in total at this time and offers the following comments.

As an initial matter, EPA is aware that the Greenbrier area, including potentially the Turkey Creek area, experienced significant flooding in June 2016 and that the flooding may or may not have resulted in changed conditions requiring revisions to the submitted plan. Please provide your views as to whether an additional site visit to assess the impacts from the flooding makes sense. In the event you believe further site assessment is necessary in light of the flooding, we would appreciate the opportunity to view the area with you.

Recognizing the foregoing may result in changes, EPA offers the following comments on the plan as submitted:

- EPA accepts the proposal to use a three-step approach to developing and implementing plans for removal of dams 11-20, removal of dams 1-10, and remaining restoration and mitigation issues. That being said, a schedule for submittal of Volumes II (dams 1-10) and III (remaining issues) should be provided.
- EPA generally concurs with the recommendation to conduct a wetlands survey along the channel to identify ~~and any~~ wetlands that may be present so that impacts to them can be avoided during construction.
- While EPA does not object to use of the pre-existing ford crossing at Dam 15 during construction to access the channel, please provide information regarding whether you plan to enhance, modify or remove that structure at the end of the process.
- Post-construction benthic macroinvertebrate and fish monitoring should be included to facilitate evaluation of project success.
- A list of vegetative species to be used for riparian areas and stabilization measures should be included.
- Restoration and mitigation information provided in Volume III should include a proposed planting plan, monitoring plan, performance standards, remediation plans, and success criteria in order to determine if restoration efforts are successful. This information should also include

Commented [DB1]: Without good pre-project data how would this data facilitate an evaluation of project success?

Commented [DNJ2]: These could potentially be omitted as they are generally included in a proposed mitigation plan

the proposal of additional mitigation to be provided if the proposed measures presented in the mitigation plan are not determined to be successful based on performance standards outlined in the plan.

- The plan indicates a one year monitoring period to determine if further stream restoration techniques are required for stabilization of each dam removal reach; however, a minimum five-year monitoring period will be required.

Pursuant to Paragraph 25 of the Consent Decree, a response to these comments should be provided within 60 days. If you have any questions, please contact Stefania D. Shamet of our Office of Regional Counsel at (215) 814-2682 or representatives of Potesta can call me directly at (215) 814-2099.

Sincerely,

Todd Lutte
Enforcement Coordinator
Office of Environmental Programs
Environmental Assessment and Innovation Division

Commented [DB3]: Channel morphology should sort itself out rather quickly < 2yrs. However, vegetative success which is key in lateral stability will take longer. % years seems reasonable with a caveat of two "successful" years.

Commented [DNJ4]: A minimum five year monitoring period is the general guideline for all mitigation projects.